

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)	
Complainant,)	
)	
v.)	8 U.S.C. 1324c Proceeding
)	Case No. 95C00008
)	
SIMON OSAGIE IYAWAWE,)	
Respondent.)	

FINAL DECISION AND ORDER OF DISMISSAL
(March 24, 1995)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Terry M. Louie, Esq.
for Complainant

Rose M. Grengs, Esq.
for Respondent

I. PROCEDURAL HISTORY

On January 25, 1995, the Immigration and Naturalization Service (INS or Complainant) filed its Complaint alleging violations of Section 274C of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324c, enacted by the Immigration Act of 1990, Pub. L. No. 101-649 (1990), in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint includes an underlying Notice of Intent to Fine (NIF), served by INS on Simon Osagie Iyawe (Iyawe or Complainant) on March 17, 1994.

Count I, the only count, charges Respondent with knowingly falsely making two Forms I-9 (employment eligibility verification forms) for employment at Specialty Staff, Inc. and Masterson Personnel, Inc. in Minnesota. INS demands a civil money penalty of \$500 (\$250 for each violation) and requests that an order issue directing Respondent to cease and desist from violating § 274C of the INA. Exhibit B to the Complaint is Respondent's request for a hearing.

On January 24, 1995, this Office issued a Notice of Hearing (NOH), which transmitted the Complaint to Respondent.

On February 17, 1995, counsel for Respondent, Dwight J. Leatham, Esq., filed a motion to withdraw as counsel of record and to substitute Rose Grengs, Esq. as counsel for Respondent. In addition, a motion requesting additional time to answer the Complaint was filed on February 17, 1995 by Rose Grengs.

On February 27, 1995, I granted Respondent's Motion to Substitute Counsel and Extension of Time until April 10, 1995 to file an answer.

The recent decision by the Chief Administrative Hearing Officer (CAHO) in United States v. Remileh, 5 OCAHO 724 (1995), compels me to dismiss the Complaint against Respondent.

II. DISCUSSION

In Remileh, the CAHO determined that:

the attestation of an employee to false information on a Form I-9 does not constitute the creation of a "falsely made" document in violation of 8 U.S.C. § 1324c. It is the underlying fraudulent document, submitted to an employer to establish identity and/or work authorization, which is the proper basis of a section 1324c violation against an employee in the context of the employment eligibility verification system of 8 U.S.C. § 1324a.

5 OCAHO 724, at 2-3.

Count I (the false making of two Forms I-9 for the purpose of satisfying a requirement of the INA) of the Complaint fits squarely within the interpretation of a falsely made Form I-9 making violation discussed by the CAHO in Remileh. The specification before me of the charges in Count I is on all fours with the specification alleged in Remileh. For that reason, this Complaint must be dismissed on the authority of Remileh. In that light, it would be futile to require Respondent to fulfill its obligation to answer the Complaint. Therefore, without awaiting an answer by Respondent, I dismiss the Complaint for failing to state a cause of action upon which relief can be granted. See 28 C.F.R. §§ 68.10, .28(a)(5) and .28(a)(8).¹

III. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER

I have considered the Complaint and accompanying documentary materials. All motions and other requests not previously disposed of are denied. Accordingly, as previously found and more fully explained above, I determine and conclude upon a preponderance of the evidence:


1. Complainant fails to state a claim upon which relief can be granted;
2. the Complaint is dismissed.

¹ See also Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. pt. 68 (1994), as amended by 59 Fed. Reg. 41,243 (1994) (to be codified at 28 C.F.R. § 68.2(i), (k)) [hereinafter cited as 28 C.F.R. pt. 68].

Absent modification by the CAHO within 30 days, this decision and order shall become the final agency decision and order of the Attorney General. 8 U.S.C. § 1324c(d)(4). "A person or entity adversely affected by a final order under this section may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order." 8 U.S.C. § 1324c(d)(5).

SO ORDERED.

Dated and entered this 24th day of March, 1995.



Marvin H. Morse
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Order of Dismissal were mailed first class, postage prepaid this 24th day of March, 1995 addressed as follows:

Counsel for Complainant

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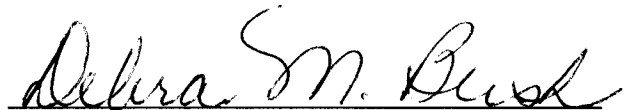
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